IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

79-2048

Supreme Court, U. S.
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WILLIAM DYKSTRA, PETITIONER

vs

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JERROLD M. LADAR
507 Polk Street
Suite 310
San Francisco,
California 94102
(415) 928-2333

Attorney for
Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner WILLIAM DYKSTRA petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals (Appendix A infra) is not reported and is "not for publication." The opinion was filed on May 30, 1980.

JURISDICTION

The opinion of the Court of Appeals was entered on May 30, 1980. The jurisdiction of this Court is invoked under 28 USC §1254(1).

QUESTION PRESENTED

WHETHER OR NOT THE JUDGMENTS OF CONVICTION OF VIOLATING 18 USC §1951 SHOULD BE REVERSED BECAUSE, AT TRIAL, NO EVIDENCE WAS INTRODUCED UPON WHICH THE JURY COULD HAVE CONCLUDED THAT THE ALLEGED ILLEGAL CONDUCT HAD ADVERSELY AFFECTED INTERSTATE COMMERCE.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, Petitioner was convicted of six counts of violating the Hobbs Act (18 USC §1951) and one count of conspiracy to violate that act. As to three substantive Hobbs Act counts,

judgments of acquittal were entered at the close of the government's case and as to four other such counts, the jury returned verdicts of acquittal.

Petitioner was the business representative of Freight Checkers and Clerical Workers Local 856 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The activities which were the subject of the indictment involved the operation of Local 856, and Petitioner, at the South San Francisco Produce Terminal.

The Produce Terminal is essentially a clearing house for produce shipped in San Francisco. It is comprised of dozens of warehouses and loading docks, each of which is operated by a merchant. Each merchant's business is referred to as a "house." Houses purchase produce from farmers or other merchants in California and other states and then sell the produce

to local stores or restaurants. The produce is shipped by truck to the terminal and unloaded and re-shipped by truck to its ultimate desitination. It is the process of loading and unloading the produce that is the focal point of the case.

In most instances, the trucks are loaded and unloaded by a group of workers whose only job is to do that work. These specialized workers have come to be known in the trade as "lumpers." The lumpers were members of local 856 and were represented on the job by Petitioner and Joseph Ciraulo.

Disputes often arose as to whether or not, for a particular load, a lumper was necessary, as to whether or not a particular house was hiring fewer lumpers than required, as to whether or not the lumpers were unloading the goods of some houses out of turn and before those of other houses, and as to how the lumpers

and other persons at the terminal treated each other.

It was the role of the business representatives, including Petitioner and Ciraulo, to mediate the various disputes that arose on a daily basis, to insure that the lumpers were treated fairly, and to see to it that the houses abided by the terms of the union contract. Petitioner was convicted of violating 18 USC §1951 with respect to four alleged victims.[1/] However, the government failed to introduce any evidence tending to show that the payments made to Petitioner by any of these victims did, or could have, affected interstate commerce. All that the government established was that the payments were made. The government did not show that the funds

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1/ Petitioner was also convicted of conspiring with Ciraulo to violate §1951 with respect to these alleged victims.

used to make the extorted payments were taken from the business's assets or potential assets. The fact that the source and nature of these payments were not disclosed left the jury with no facts upon which to conclude that interstate commerce was involved within the meaning of §1951.

REASONS FOR GRANTING WRIT

1. The decision below conflicts with the decision of another circuit and raises what may become a significant and recurring problem concerning efforts to enforce 18 USC §1951.

The writ should be granted because the evidence adduced at trial, upon which Petitioner stands convicted, failed to permit the inference that Petitioner's conduct affected interstate commerce.

For purposes of the Hobbs Act, interstate commerce may be "adversely affected," either by an increase in the cost of doing business in interstate commerce, or by the reduction of profits from interstate business. It is not necessary

to show that the subject of the extortion is to affect interstate commerce. United States v. Provenzano, 334 F.2d 678 (3rd Cir. 1964). For example, it is sufficient for conviction if a borrower from whom prompt payment is obtained by extortionate means is thereby less able to trade in interstate commerce or to meet his obligations for purchases in interstate commerce. United States v. Nakaladski, 481 F.2d 289 (5th Cir. 1973).

However, there must be at least some evidence upon which to conclude that there has been some effect on interstate commerce.

Each of the counts upon which Petitioner was convicted presents a picture squarely within the confines of United States v. Merolla, 523 F.2d 51, 54-55 (2d Cir. 1975), where a Hobbs Act conviction was reversed for failure of the government to prove the same jurisdictional element

attacked here:

In Merolla, and the cases cited therein, the government placed into evidence specific testimony attempting to prove the disputed element and the courts had to make findings from the evidence. The lack of evidence in Petitioner's case, however, stems from the fact that the subject was not inquired into. Thus, this is not an issue raised by a mere factual dispute.

The absence of any evidence of the requisite effect on interstate commerce resulted in a conviction for conduct which was not within the scope of the crime charged.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

JERROLD M. LADAR

JERROLD M. LADAR
507 Polk Street
Suite 310
San Francisco,
California 94102

Counsel for Petitioner

June 24, 1980.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff/Appellee, v. WILLIAM DYKSTRA, Defendant/Appellant.	NO. 79-1626 CR79-0183-SC MEMORANDUM

Appeal from the
United States District Court
for the Northern District
of California

Before: TANG, SKOPIL, and FARRIS,
Circuit Judges

William Dykstra, a teamsters union official, appeals his convictions for one conspiracy count and six substantive counts charging violations of the Hobbs Act, 18 U.S.C. §1951 (extortion affecting interstate commerce). Dykstra received concurrent sentences on each count. We affirm.

None of Dykstra's arguments on appeal suggest any error with respect to

APPENDIX A

proof of the conspiracy. The conspiracy became complete as soon as a threat was made, even if Dykstra never obtained any cash and even if, as he argues, he failed to affect commerce because the cash he did obtain came from non-business sources. See United States v. Sanford, 547 F.2d 1085, 1091 (9th Cir. 1976). Because no collateral consequences appear in the record, this court, under the concurrent sentence doctrine, need not review the remaining convictions. United States v. Martin, 599 F.2d 880, 887 (9th Cir. 1979).

We pause long enough to add, however, that we find Dykstra's contentions to be without merit. To establish a Hobbs Act violation, the Government must show only a probable or potential effect on commerce. See United States v. Phillips, 577 F.2d 495, 501 (9th Cir.), cert. denied, 439 U.S. 831 (1978); United States v. Blakey, 607 F.2d 779, 783 (7th Cir. 1979).

The government plainly met this burden. Even accepting Dykstra's novel argument that a violation of the Hobbs Act requires proof that the money he received came from non-business sources, there was ample evidence from which the jury readily have inferred that the money Dykstra received came from business sources.

Dykstra's remaining contentions are insubstantial. The evidence showed that Dykstra was convicted of the offenses charged in the indictment. It also demonstrated that the payments that Dykstra received were coerced, not voluntary.

The judgment of the district court is affirmed.